IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CONTEMPT PETITION NO.425 OF 2007

Ramesh Nagnath Kadam ..Petitioner.
v.
1. D.A.Joshi, Judge
2. The State of Maharashtra ..Respondents.

Mr.Rakesh Agrawal for M.P.Vashi & Associates , adv. for the Petitioner.

Mr.Geeta Mulekar, A.G.P. for the Respondent/State.

CORAM: J.H.BHATIA,J.
DATE: 4th December,2007.

P.C.

1. Heard Mr.Agrawal the learned counsel for the petitioner. The petitioner filed suit no.223 of 2007 wherein he took out notice of motion no.166 of 2007 with the prayer that the defendants therein should not be allowed to be nominated/selected for the post of member of ward committee as they were not qualified for the post. Ad-interim relief was prayed against nomination/selection, which was refused by the learned Judge of the City Civil Court. He issued notice to the defendants returnable on 2nd November, 2007. The present petitioner had filed Appeal from Order no.859 of 2007 against that order wherein the learned Single Judge of this Court (A.S.Oka, J.) clarified the legal position about the nomination/selection of members of ward committee and directed the trial Court Judge to hear and

decide the notice of motion, which was made returnable on 2nd November, 2007, as expeditiously as possible and preferably on the same day and if notice of motion could not be heard on the same day, the same will have to be heard in vacation by the concerned Vacation Judge.

2. This order was passed by this Court on 30th October, 2007. When the matter come up before Mr.D.A.Joshi the learned Judge of the City Civil Court, Dindoshi, the petitioner took out chamber summons for amendment of plaint because the process of selection/nomination of ward member on ward committee was already completed on 31st October, 2007. By the amended prayer, the petitioner wanted the Court to restrain nominees from acting as such. That Chamber Summons was allowed. In view of this changed circumstances, notice of motion came up for hearing before the learned Judge Mr.D.A.Joshi on 3rd October, 2007. As the process of nomination/selection was already completed, the purpose of notice of motion had also substantially changed and, therefore, the other party wanted to file reply to the same. The learned Judge granted 20 days time for filing reply of the defendant no.1. It is the contention of the petitioner that Mr.Joshi has committed contempt of this Court by granting adjournment of 20 days. According to him, notice of motion should have been heard during the vacation and as he has not complied with that direction,

the contempt of this Court was committed.

3. In view of the facts stated above, it is clear that the nature of the suit and the prayer as well as the prayer in notice of motion were substantially changed in view of the completion of process of nomination/selection of members on ward committee. The notice of motion, which was made returnable on 2nd November, 2007 by the earlier order was only to stop the process while by making amendment as well as taking out chamber summons, the prayer was to stop the nominated members from acting as such. Therefore, it was but natural that the other party should be given appropriate time for filing a reply. If there would be no amendment in the plaint by taking out chamber summons, the learned Judge was bound to hear the matter either on 2nd November, 2007 or during the vacation but as material changes had taken place when the amendment was made, it would be against the principles of justice not to give reasonable time to other party to file reply. In such circumstances merely because matter was adjourned by 20 days for filing reply, it can not be said that contempt has been committed. There is no substance in the present Contempt Petition.

4. In the result, Contempt Petition stands dismissed.

(J.H.BHATIA,J.)